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CLEARINGHOUSE RULE 94-200

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In SECTION 1, the new language in the title of ch. HSS 50 should be underscored so that the title reads as follows: “FACILITATING THE ADOPTION OF CHILDREN WITH SPECIAL NEEDS”. [See s. 1.05 (3) (b), Manual.]

b. The first sentence of s. HSS 51.07 (3) (a) would be clearer if it were broken down into separate subdivisions for each reason for which an application may be closed.

c. Section HSS 51.07 (7) should begin “Applicants shall notify....” Also, s. HSS 51.07 (8) (d) should begin “The department shall gather....” [See s. 1.01 (1) and (2), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. HSS 51.03 (3), the reference to “ss. 50.07 to 50.10, Stats.,” is incorrect and should be changed to “ss. HSS 50.07 to 50.10.”

b. In s. HSS 51.03 (10), the reference to “s. HSS 51.05 (5) (i) and (j)” is incorrect and should be changed to “s. HSS 51.05 (4) (i) and (j).”

c. In s. HSS 51.06 (1), the reference to “s. HSS 51.05 (d)” is incomplete and should be changed to “s. HSS 51.05 (4) (d).”

d. In s. HSS 51.06 (3), the reference to s. HSS 51.05 (3) is incorrect and should be changed to “s. HSS 50.05 (3).”

e. In s. HSS 51.07 (7), the reference to “s. HSS 56.04 (1) 4 and 5” is incomplete and should be changed to “s. HSS 56.04 (1) (b) 4 and 5.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis in the “Transmittal to Legislative Council Rules Clearinghouse” indicates that the rule applies to children “for whom courts have made the Department [of Health and Social Services (DHSS)] legal guardian and have granted the Department custody.” However, s. HSS 51.01 indicates that the criteria and procedures in ch. HSS 51 are to ensure that every special needs child “in the care of the department” is placed in a suitable adoptive placement. Rather than referring to children “in the care of” DHSS, it would be preferable if s. HSS 51.01 specifically stated that the criteria and procedures in ch. HSS 51 are to ensure that every special needs child for whom courts have made DHSS legal guardian and have granted DHSS custody is placed in a suitable adoptive placement.

b. Section HSS 51.03 (4) defines “applicant” or “applicant family” as meaning “a prospective adoptive family, married couple or single person completing and signing a formal application for a home study by the department.” As only the spouses in a married couple or a single person signs the application, it is unclear who is encompassed in the term “applicant family.” While in many sections it appears to be appropriate to refer to the applicant family [for example, in s. HSS 51.07 (8)], this lack of clarity creates ambiguity in other sections. For example, s. HSS 51.06 (3) indicates that the “family” may request service from a licensed adoption agency and request reimbursement of expenses. It appears that this should be limited to the applicant. As another example, s. HSS 51.07 (4) provides for sending written notification to an “applicant family” regarding a decision to place a home study on hold. It appears that the notification should be sent to the applicant. The rule should be reviewed for such lack of clarity, and DHSS should consider defining “applicant family” separately in s. HSS 51.03.

Also, it is noted that in several sections, for example ss. HSS 51.07 (3) (b) and 51.08 (4), the word “family” is used instead of the defined term “applicant family.” The rule should also be reviewed for consistency on this point.

c. In s. HSS 51.03 (10), it would be preferable to use the defined term “home study” instead of “adoptive home study.”

d. Section HSS 51.03 (10) refers to the “needs for family resources.” Section HSS 51.04 is entitled “**NEED FOR ADOPTIVE FAMILY RESOURCES**” (emphasis added). It would be preferable to refer consistently to the need for adoptive family resources.

e. In s. HSS 51.03 (15), “principal” should replace “principal.”

f. Section HSS 51.03 (16) refers to comparing information provided by a person and a published description “in the months prior to the beginning of the next screening process.” Section HSS 51.04 (1) refers to “needing placement before the next screening,” and s. HSS 51.05 (2) and (4) (a) refer to the “date of screening.” However, it is not clear when the screening occurs or how one becomes aware of the “date of screening.” The rule should make clear the means by which the date of screening is established and publicized. This is especially important

inasmuch as s. HSS 51.05 (4) provides that service is closed for persons who do not return screening forms prior to the date of screening.

While these sections suggest that there is a common pre-established date of screening for many individuals, s. HSS 51.05 (4) (e) indicates that DHSS must complete a screening within 30 days after receiving the screening form. This language suggests that the date of screening is specific to the individual. Again, the rule should be clarified with respect to how the time of screening is established.

g. Section HSS 51.03 (17) defines “special needs child” as a child meeting “the criteria of s. HSS 50.03 (1) (b) 3 or 4.” This means that ch. HSS 51 does *not* include a child described in s. HSS 50.03 (1) (b) 1 (a child who is 10 years of age or older if age is the only factor in determining eligibility) or s. HSS 50.03 (1) (b) 2 (a child who is a member of a sibling group of three or more children who must be placed together) even though such children are “special needs children” under ch. HSS 50.

The analysis indicates that the rule applies to children “for whom courts have made [DHSS] legal guardian and have granted [DHSS] custody.” Are children described in s. HSS 50.03 (1) (b) 1 and 2 ever children for whom the courts have made DHSS legal guardian and given DHSS custody? If so, what provision, if any, is made for facilitating the adoption of such children?

h. According to s. HSS 51.04 (1), DHSS may limit the number of selected families “in any region or sub-regional area of the state.” While “region” is a defined term in s. HSS 51.04 (15), “sub-regional area” is not. Is there a limit as to how small a “sub-regional area” may be, for example, a county, a city or a ward?

i. Section HSS 51.04 (2) (intro.) refers to the “numbers and types of adoptive homes needed,” s. HSS 51.05 (1) refers to the “number and type of homes...needed” and s. HSS 51.05 (2) refers to “number and types of homes...needed for placement of children.” It would be preferable to use one phrase consistently for this concept.

Similarly, s. HSS 51.05 (4) (d) 1 refers to the “published family resource needs described in s. HSS 51.04 (1),” s. HSS 51.05 (4) (d) 3 refers to the “number of family resources needed” and s. HSS 51.05 (4) (f) refers to the “needed number of resources.” Again, it would be preferable to use one phrase consistently for this concept.

j. In s. HSS 51.05 (1), the phrase “program and the” should be “program, the” as the phrase following the proposed comma is the second in a series of three items.

k. In the second sentence of s. HSS 51.05 (2), the word “Department” should not be capitalized.

l. Section HSS 51.05 (4) indicates that DHSS “shall close service” to individuals who do not complete screening forms and return them prior to the date of screening. The rule does not make clear what “close service” means. Moreover, s. HSS 51.06 (2) indicates that DHSS may “terminate service.” If there is a distinction between “close service” and “terminate service,” it should be explained. If there is not a distinction, one term should be selected and used [and, preferably, defined in s. HSS 51.03].

m. Section HSS 51.05 (4) (h) provides that persons who already have a child in their home are exempt from “screening requirements.” Section HSS 51.05 (4) (i) indicates that an adult relative is exempt from “screening procedures.” The distinction between “requirements” and “procedures” is not clear. If there is a distinction, it should be explained. If there is not a distinction, one term should be selected and used. Also, are these individuals required to attend either a group or individual informational meeting?

n. In s. HSS 51.05 (4) (j), the term “home study assessment” should be changed to “home study.” Similarly, in s. HSS 51.06 (1), the term “an adoptive home study” should be changed to “a home study.” Also, in two sentences of s. HSS 51.07 (4), the term “the study” should be changed to “the home study.”

o. In order to use consistent terminology, it would be preferable to have s. HSS 51.07 (1) (a) refer to the “criteria in sub. (8)” rather than the “factors in sub. (8)”, inasmuch as s. HSS 51.07 (8) is entitled “ELIGIBILITY CRITERIA.” Similarly, in s. HSS 51.07 (5), the phrase “eligibility requirements under sub. (8)” in the second sentence and the phrase “eligibility requirements” in the third sentence should be changed to “the criteria in sub. (8).”

p. Section HSS 51.07 (2) should specify who determines that there is a “good reason” for not completing the home study within six months (e.g., “as determined by the department”).

q. In the first sentence of s. HSS 51.07 (3), the term “study process that” should be changed to “study process if.”

r. In s. HSS 51.07 (4), the third sentence contains the phrase “within 6 months after placing the home study on hold,” and the last sentence contains the phrase “within 6 months of placing the study on hold.” In the last sentence, the word “of” should be changed to “after.”

s. In s. HSS 51.07 (8) (c), the phrase “child to age of majority” should be changed to “child to the age of majority.” In the alternative, could “child to 18 years of age” be substituted?

t. In the last sentence of s. HSS 51.07 (8) (d), the possessive form should be used in several phrases, for example, the section should refer to the “applicant’s” level of function and the “applicant’s” views about various things. Also, “applicant family motivation” should be “applicant family’s motivation.”

Further, the word “and” should be inserted following the last semicolon in the last sentence.

u. In order to be consistent with the terminology in s. HSS 51.08 (3), it appears that the two uses of the phrase “home study” in the last sentence of s. HSS 51.08 (4) should be changed to “home study assessment.”

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

Section HSS 51.07 (8) (c) indicates that “[u]pon request, the applicant shall authorize release of information to the department concerning results of any medical or mental health eval-

uation or treatment.” Under federal law, records related to alcohol and drug abuse are treated separately. [See, generally, 42 C.F.R. subch. A, Part 2, regarding confidentiality of alcohol and drug abuse patient records.] Thus, if it is envisioned that records regarding alcohol or other drug abuse evaluation or treatment also must be released upon request, this should be specified separately.